

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR INITIATION OF RULE AMENDMENTS**

Agenda # III.B.3.

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend the air quality rules and to adopt new rules to implement federal reforms to the New Source Review permitting regulations as set forth in 40 CFR 51.165 and 40 CFR 51.166.

List of Affected Rules: This request to initiate rulemaking would amend ARM Title 17, Chapter 8, subchapters 8 and 9.

Affected Parties Summary: The proposed amendments would affect existing major stationary sources subject to the Department's Major New Source Review (NSR) permitting program.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking and conduct a public hearing to consider the proposed amendments and proposed new rules.

Background: Congress established the New Source Review program as part of the 1977 Clean Air Act Amendments, and slightly modified it in the 1990 Amendments. NSR is a preconstruction permitting program that serves two important purposes: (1) it ensures the maintenance of air quality standards when factories, industrial boilers and power plants are modified or added; and (2) it ensures that state-of-the-art control technology is installed at new plants or at existing plants that are undergoing a major modification. Over time, the NSR program has become continually more complex and has not kept pace with industry's needs to make rapid changes in order to stay competitive in the marketplace. EPA has been working for nearly 10 years to improve the NSR rules to provide flexibility for industry in making changes to their facilities, while ensuring environmental protection.

On December 31, 2002, the U.S. Environmental Protection Agency (EPA) adopted amendments to its Major New Source Review (NSR) regulations, concerning modifications that may be made to existing facilities without triggering NSR. The amendments were challenged in federal court, and the United States Court of Appeals for the District of Columbia issued a decision on June 24, 2005, in which the court denied some of the petitioners' claims, vacated provisions of the regulations concerning a Clean Unit applicability test and Pollution Control Projects, and remanded certain recordkeeping provisions for an acceptable explanation or adoption of an appropriate supported alternative. The Department is proposing that the Board amend the state's NSR rules in ARM Title 17, Chapter 8, subchapters 8 and 9, and adopt new rules, to include the provisions of EPA's NSR amendments that were upheld by the court.

The proposed NSR Reform rules would allow for:

- use of past actual emissions and projected future actual emissions, rather than potential emissions, in measuring emissions increases from a proposed project (the facility may still use potential emissions);
- use of a 10-year look-back period in selecting a 24-month baseline period (chosen by the facility) used for measuring past actual emissions; and
- use of a five-year look-back period (chosen by the facility) for electric utilities.

The proposed rules also would:

- abandon the present provision authorizing use of source-specific allowable emissions in measuring baseline emissions;
- exclude increases due to unrelated demand growth from the measurement of projected future actual emissions; and
- establish a Plantwide Applicability Limitation (PAL) program allowing facilities to establish a cap on emissions and trade increases and decreases under the cap, without installing controls on new or modified emissions units, if the modifications do not cause emissions to violate the plantwide cap.

There are two minor differences between the proposed Montana NSR Reform rules and the federal rules: (1) Montana's rules would also include certain recordkeeping and reporting requirements; and (2) Montana's rules would remove the federal NSR Reform rules requirement for inclusion of start-up, shut-down, and malfunction (SSM) emissions from both the baseline actual emissions and the projected actual emissions calculations used to determine major modification applicability.

Based on Department analysis of recent and historic Montana major NSR permitting actions, the Department determined that adoption of the NSR reform rules likely would result in relatively little actual impact to major NSR program applicability. The Department receives fewer than five major NSR permit applications per year. Most major NSR permit actions reviewed by the Department greatly exceed applicable emission thresholds; therefore, most major NSR actions will not be able to avoid major NSR review through the implementation of changes under NSR reform.

Hearing Information: The Department recommends that the Board appoint a presiding officer and conduct a public hearing to take comment on the proposed amendments and inclusion of the proposed amendments in the State Implementation Plan (SIP). Section 75-2-205, MCA, states that no rule, rule amendment, or rule repeal under the Clean Air Act of Montana may take effect except after public hearing on due notice. EPA regulations require a public hearing to take comment on adoption of revisions to the SIP.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment and Adoption;
2. Modify the notice and initiate rulemaking; or
3. Determine that amendment and adoption of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the proposed MAR notice attached.

Enclosure:

1. Draft Notice of Public Hearing on Proposed Amendment and Adoption.